

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
LOCUST UNITED METHODIST CHURCH	:	BOARD OF APPEALS
	:	HEARING EXAMINER
Petitioner	:	BA Case No. 05-027C&V

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DECISION AND ORDER

On January 30, 2006 and August 28, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petitions of the Locust United Methodist Church, Petitioner, for (1) a conditional use for a structure used primarily for religious activities, and (2) variances to (i) reduce the required 30' use setback from a public street right-of-way to as low as 1.85 feet for parking and (ii) reduce the 20' use setback from a lot line to as low as 14 feet for parking and (iii) reduce the 30' structure setback from a rear lot line to 21' for a church structure to be located in an R-SC (Residential – Single Cluster) Zoning District, filed pursuant to Sections 131.N.38 and 130.B.2 of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

David A. Carney, Esquire, and Thomas M. Meachum, Esquire, represented the Petitioner. Carletta D. Allan, Willis Gay, Zach Fisch, and Carl Belcher testified on behalf of the Petitioner. Jeanne Revell Parker appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find the following facts:

1. The Petitioner is the owner of the subject property, known as 6821 and 6851 Martin Road, which is located in the 5th Election District on the northeast and northwest corners of the intersection of Martin Road/Harriet Tubman Lane and Freetown Road in Simpsonville (the "Property"). The Property is referenced on Tax Map 41, Block 6, as Parcels 216 and 283.

2. The Property consists of two parcels: Parcel 1, an "L"-shaped lot containing about 2.87 acres located on the northeast corner of the Martin Road/Freetown Road intersection, and Parcel 2, a triangular-shaped lot containing about 0.62 acres located on the northwest corner of the Harriet Tubman Lane/Freetown Road intersection. Parcel 1 has approximately 450 feet of frontage on the curved right-of-way for Freetown Road and about 420 feet of frontage on Martin Road. The northern end of Parcel 1 is about 328 feet deep, the central portion is about 180 feet deep, and a portion of the southern end is only 60 feet deep. The eastern end of the site is about 146 feet deep. Parcel 1 is currently improved in the southeastern area with a small church building and paved parking areas, all of which will be removed. The central portion of the site is generally open lawn with scattered mature trees. The northern one-third portion of Parcel 1 is a fenced cemetery that dates back to 1870. Parcel 1 is relatively level.

Parcel 2 has about 300 feet of frontage on Freetown Road, 210 feet of frontage on Harriet Tubman Lane and is about 250 feet long on its western boundary. Parcel 2 is unimproved and wooded.

3. Vicinal properties include:

(a) To the north and northeast of Parcel 1 are NT-zoned single-family detached residential dwellings.

(b) To the east of Parcel 1 and behind the existing church building is a cemetery.

(c) To the south of the Property across Martin Road/Harriet Tubman Lane are Parcels 215, an unimproved lot, and Parcel 322, an R-SC zone property containing a one story single-family detached dwelling.

(d) To the west of Parcel 2 is Parcel 217, an R-SC zoned lot containing a single-family detached dwelling fronting on Harriet Tubman Lane.

4. The Petitioner proposes to remove the existing church building and parking areas and develop on the Property a new religious facility with associated parking. The Petitioner plans to build an 8,414 square foot church building to be located in the central portion of Parcel 1, about 109 feet from Freetown Road, 52 feet from Martin Road, and 21 feet from the western lot line. The building will consist of a main assembly area with 336 seats, meeting rooms and administrative offices. The total lot coverage of the building will be about 5%. The proposed building will be no more than 34 feet high.

Parking for the church facility will be located to the west, south and east of the new building. The parking spaces in front of the building will be situated about 30 feet from Freetown Road. A drive aisle and about seven parking spaces will be situated south of the building and within as close as 2.88 feet from Martin Road. The parking spaces in the eastern portion of Parcel 1 will be situated as close as 1.85 feet from Martin Road, 14 feet from the east side lot line, and 4.47 feet from the rear lot line. A total of 72 parking spaces will be located on Parcel 1.

Access to Parcel 1 will be gained via a single driveway entrance located along the Freetown Road frontage about 180 feet from the Freetown Road/Martin Road intersection. A dumpster will be located along the northern edge of this driveway. A stormwater management facility will be located to the north of the proposed church building. The existing cemetery in the northern portion of Parcel 1 will remain.

An additional 40 parking spaces will be placed on Parcel 2. These parking spaces will be located five feet from the rights-of-way of Harriet Tubman Lane and Freetown Road and 15 feet from the west side lot line. Access to this lot will be gained via a driveway entrance to be located at the southwest corner of the lot and about 170 feet from the Harriet Tubman Lane/Freetown Road intersection.

The Petitioner will install 12' tall, defused lighting fixtures in the parking lots that will be directed down and away from adjoining properties and streets. Parking lot lights will be turned off by 10:00 p.m. A Type "E" landscape edge will be planted along the Martin Road and Freetown Road frontages of Parcel 1, as well as along the Freetown Road and Harriet Tubman Lane frontages of Parcel 2. The portion of Parcel 1 behind the proposed building and stormwater management facility will be landscaped with a Type "C" buffer. The cemetery perimeter is already buffered by existing trees. The rear perimeter of the eastern portion of Parcel 1 will contain a Type "A" landscape buffer. In addition, the stormwater management facility and the interior parking areas will be landscaped in accordance the Howard County Landscape Manual.

5. The Property will be used on Sundays for church services, which occur at 8:00 a.m. and 10:00 a.m., and Sunday school classes, which occur at 9:00 a.m. Bible studies, choir practice,

committee and social meetings are held on weekday evenings and Saturday mornings. Charitable and civic groups, such as Boy Scouts and Girl Scouts, may occasionally use the facility. Weddings, funerals, and church dinners will be conducted indoors, while church picnics, summer camps, and yard sale/fundraisers will occasionally be held outdoors. The church employs one full-time pastor and up to seven part-time employees and seasonal maintenance workers.

6. The Property will be served by public water and sewer facilities. The 2000 General Plan designates the Property as a "Residential Area." Freetown Road is a major collector with two travel lanes and a posted speed limit of 25 miles per hour. Martin Road/Harriet Tubman Lane is also a major collector with two travel lanes and a posted speed limit of 30 miles per hour. Visibility from the proposed driveway to Parcel 1 is clear to the intersection to the south and over 500 feet to the north.

7. Ms. Allan, the church pastor, testified that weekday evening meetings would be held between the hours of 6:30 p.m. and 10:00 p.m. Mr. Fisch, the project's civil engineer, testified that the proposed location of the stormwater management facility is the lowest area of the Property and is the only feasible location for the facility. He stated that no stormwater management facility is needed on Parcel 2 because there are existing drainage pipes that will direct the runoff under Harriet Tubman Lane and Freetown Road. He stated that the access to Parcel 2 will have an unobstructed visibility. There will be about 5 feet of space around the perimeter of Parcel 2 in which to install Type "E" landscaping, which will be low shrubs in order to permit unobstructed views for motorists.

Mr. Fisch testified that, due to its small size and shape, the building envelope of Parcel 2 is only about 40% of the area of the lot. He stated that the size of the church building is relatively

small for church structures.¹ He further testified that the proposed dumpster will be enclosed and screened and that no tot lot is planned.

Mr. Belcher, a member of the church building committee, testified that two gravesites have been found to be located on the Property near the southeast corner of Parcel 1. These gravesites will be marked and preserved (see Exhibit 3).

At the August 28, 2006 hearing, Mr. Fisch testified that a sidewalk and pedestrian crosswalk will be installed to connect the parking lot on Parcel 2 to the parking lot on Parcel 1. Mr. Fisch presented two alternative locations for the crosswalk (see Exhibits 8 and 9). The crosswalk will be durable and paved with no steps and will be about 30 feet long. He introduced a traffic count study indicating that the Freetown Road and Martin Road/Harriet Tubman Lane intersection operates at a level of service "A" on Saturdays (see Exhibit 5); Mr. Fisch noted that traffic can be expected to be lighter on Sundays. He stated that Freetown Road is no wider than the typical major collector. Traffic traveling south on Freetown near the Property is approaching a stop condition. He testified that the required stopping sight distance for a road with a 25 mph speed limit is 150 feet; the actual sight distance for this intersection is between 250 and 280 feet. The area around the intersection is relatively flat with no obstructions and the proposed landscaping will be low shrubs. Pedestrian crossing signs will be erected at the crossing area and about 250 feet north of the crosswalk. Of the two alternative locations, Mr. Fisch recommended that the second proposal may be safer because it shows the crosswalk closer to the intersection and will be more visible to motorists.

¹ I take administrative notice that, of the 20 churches approved for conditional uses in the past four years, the

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan: The Howard County General Plan designates the area in which the Property is located as “Residential Area.” Church facilities are commonly found in residential areas. The proposed use will be located on a 3.49-acre site and is not out of scale with the other uses in the area. The church building and parking will be concentrated in the central and southern portions of the site and will be well separated from vicinal residential properties. The intensity of the use will be low to moderate. The facility will be located on two major collector roadways. Accordingly, the nature and intensity of the operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

B. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Site will have adverse effects on vicinal properties above and beyond those ordinarily associated with such use. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed church has adverse effects in the R-SC zone. The proper question is whether those adverse effects are

average size is about 26,000 square feet.

greater at the proposed site than they would be generally elsewhere within the R-SC district.

The Petitioner has met its burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with a religious facility use in the R-SC district:

1. Physical Conditions. The proposal consists of the construction of a typical religious facility and associated parking. The proposed use will be conducted primarily within the proposed building and consist of activities that are normally associated with a religious facility. Church uses will be primarily on Sundays, with meetings on weekday evenings ending no later than 10:00 p.m. Parking lot lighting will be directed downward and away from all adjacent properties and turned off at 10:00 p.m. No tot lot is proposed. While the proposed outdoor activities, such as picnics and yard sales, will generate some noise, they will occur only during daylight hours will be located in the central and southern portions of the Property, well away from vicinal residential properties. The use will not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a religious facility in an R-SC zoning district, in accordance with Section 131.B.2.a.

2. Structures and Landscaping. The size of the proposed structure is relatively small for a church building and is not out of scale with the Property or other uses in the area. In addition, it is located toward the center and southern end of the Property and will be well separated from vicinal residential properties. Although the rear of the building will be situated only 21 feet from the rear lot line, the proposed perimeter Type "C" landscaping will adequately buffer the building from the adjoining cemetery use. Consequently, the location, nature, and height of structures, walls and

fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The Petitioner proposes to install 112 parking spaces, the minimum required number of parking spaces. Although the parking spaces will encroach into the setbacks along the Martin Road frontage of Parcel 1, the Freetown Road and Harriet Tubman Lane frontages of Parcel 2, and the side lot boundaries of each parcel, they will be well separated and buffered from vicinal residential properties. In addition, the Petitioner will install Type “E” landscaping to buffer the parking areas from the roadways and Type “C” landscaping to buffer the parking lot on Parcel 2 from the adjoining residential Parcel 217. The refuse area will be located along the entrance drive and will be enclosed and screened. Consequently, parking areas, driveways, and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. The proposed driveways onto Parcels 1 and 2 will provide safe access with adequate sight distance. Given that the speed limits on the vicinal roadways are 25 and 30 mph and the traffic volume is low, I find that the installation of a deceleration lane is not appropriate, in accordance with Section 131.B.2.d.

II. Specific Criteria for Structures Used Primarily for Religious Activities (Section 131.N.38).

1. The lot coverage will be about 5%, well below the maximum lot coverage of 25% allowed by Section 131.N.38.a.

2. The proposed building will be no more than 34 feet high, which is the maximum height allowed in the R-SC district; consequently, Section 131.N.38.b does not apply.

3. Because the proposed parking lot on Parcel 2 is separated from the proposed religious facility by a public street, it does not meet the location requirements of subsection 133.B.4.d of the parking regulations. Nonetheless, I find that the accessory parking facility complies with the criteria of Section 131.N.38.c:

(a) The parking lot on Parcel 2 is separated from the lot containing the principal use by Freetown Road, a major collector, and not by an arterial highway, in conformance with Section 131.N.38.c(1).

(b) The Petitioner will provide a pedestrian street crossing connecting the parking lot on Parcel 2 to Parcel 1, which will be made clearly noticeable to drivers by means of both pavement markings and signs, in accordance with Section 131.N.38.c(2).

(c) The Petitioner provided evidence that (a) the traffic volume at the intersection of Freetown Road and Harriet Tubman Lane/Martin Road is relatively low on Sunday mornings, (b) because vehicles approaching the crosswalk will be slowing down to stop at the intersection, practical traffic speeds will be low, (c) the actual sight distance for this intersection is between 250 and 280 feet, in excess of that required for stopping sight distance for a road with a 25 mph speed limit, and the area around the intersection is relatively flat with no obstructions and the proposed landscaping will be low shrubs, (d) the length of the crossing is about 30 feet, and (e) pedestrian crossing signs will be erected at the crossing area and about 250 feet north of the crosswalk. Consequently, I find that the pedestrian crossing will be safe, in accordance with Section

131.N.38.c(3).²

(d) The Petitioner testified that the pedestrian pathway from Parcel 2 to Parcel 1 will be a durable, paved, no-step path, in compliance with Section 131.N.38.c(4).

III. Variances (Section 130.B.2)

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results

² While the Petitioner's second alternative crosswalk proposal may be safer because of its closer proximity to the intersection, I find that both alternatives are safe for the purposes of the conditional use criteria.

in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. Ap.. 28, 322 A.2d 220 (1974).

With respect to Parcel 1, I find that the combination of the Property’s irregular shape – in particular, its shallowness in the central and southern regions – and the location of the existing cemetery (which pre-dates the Zoning Regulations) are unique physical conditions that results in a practical difficulty in locating the parking areas and church building within the required setbacks. Because the existing cemetery occupies the northern one-third of Parcel 1, the only acceptable location for the church building and associated parking is in the central and southern portions of the site. These areas are exceptionally narrow, such that the depth of the building and use envelope for the Parcel is nearly zero feet at one point in the southern area of the site. The Property’s relative shallowness prevents the Petitioner from locating a reasonably sized church and associated parking within the Property’s constrained building envelope.

With respect to Parcel 2, the lot is exceptionally small and triangular in shape, resulting in a severely constrained building and use envelope. The required parking cannot be feasibly located on the

lot without a variance. Consequently, I find that the size and shape of Parcels 1 and 2, combined with the location of the existing cemetery, are unique physical conditions that cause the Petitioner practical difficulties in complying with the use setback requirements, in accordance with Section 130.B.2.a(1).

2. The proposed parking areas will be located away from vicinal residential properties and will be well screened by landscaping buffers. Lighting for the parking lots will be turned off by 10:00 p.m. The rear of the proposed church building will be well screened and adjoins an existing cemetery use. The variances, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a.(2).

3. The practical difficulty in complying strictly with the setback regulations arises from the size and shape of the parcels comprising the Property and the location of the existing cemetery, and was not created by the Petitioner, in accordance with Section 130.B.2.a.(3).

4. The proposed church building is relatively modest in size. The proposed number of parking spaces is the minimum required by the parking regulations. The parking spaces are sized and laid out in an efficient manner that conserves as much space as possible. Within the intent and purpose of the regulations, then, the variances are the minimum variances necessary to afford relief, in accordance with Section 130.B.2.a.(4).

ORDER

Based upon the foregoing, it is this **28th day of September, 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of the Locust United Methodist Church, Petitioner, for (1) a conditional use for a structure used primarily for religious activities, and (2) variances to (i) reduce the required 30' use setback from a public street right-of-way to as low as 1.85 feet for parking and (ii) reduce the 20' use setback from a lot line to as low as 14 feet for parking and (iii) reduce the 30' structure setback from a rear lot line to 21' for a church structure to be located in an R-SC (Residential – Single Cluster) Zoning District is hereby **GRANTED**;

Provided, however, that the conditional use and variances will apply only to the uses and structures as described in the petition and plan submitted, as amended herein, and not to any other activities, uses, structures, or additions on the Property, and **subject to the following conditions**:

1. All parking lot lights will be turned off by no later than 10:00 p.m. each night; and it is further **ORDERED**:

That the filing fees paid by the Petitioner for BA Case No. 05-027C&V be refunded to the Petitioner.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Appeal: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.

Lapse, Abandonment, and Revocation of Conditional Use: Unless extended as provided in Section 131.I.3, this conditional use approval will become void unless a building permit conforming to the conditional use plan is obtained within two years, and substantial construction in accordance therewith is completed within three years from the date hereof. If a building permit is not required, the use must commence within two years of the date hereof. If the conditional use is discontinued for a continuous period of two years or more, the conditional use will become void. If the conditional use is used, developed or maintained in violation of this decision or the Zoning Regulations, the conditional use may be revoked in accordance with Section 131.L.

Lapse of Variances: This variance approval will become void unless the required permits conforming to the variance plan are obtained within two years and substantial construction in accordance therewith is completed within three years from the date hereof. If the variance is granted to allow recording of a final plat, the variance will become void unless the plat is recorded in the Land Records of Howard County within three years from the date hereof. See Section 130.B.2.e.